Supreme Court, U.S.
FILED

01 405 SEP 4 - 2001

OFFICE OF THE CLERK

No. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 2000

Marilyn Cole,
Petitioner,

vs.

Doc's Drugs, Ltd.,
Respondent.

On Petition For Writ Of Certiorari
To The Appellate Court of Illinois, First District

PETITION FOR WRIT OF CERTIORARI

MARILYN COLE
Petitioner, Pro se

51 Brookston Drive
Schaumburg, Illinois 60193
(847) 352-0195

QUESTION PRESENTED

Whether the Appellate Court of the State of Illinois can refuse to decide an appeal on the merits when an appeal is technically under its jurisdiction and thus deny plaintiff's Fourteenth Amendment right to due process and equal protection under the law.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF AUTHORITIES	iii
OPINIONS BELOW	2
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS AND RULES INVOLVED	2
STATEMENT OF THE CASE	5
A. Reasons Why a Lawsuit was Filed Against Respondent and Background Information	5
B. Brief History of the Case in the Circuit Court	10
C. Brief History of the Case in the Reviewing Courts of the State of Illinois	12
REASONS FOR GRANTING THE PETITION	13
I. The Appellate Court's Dismissal of the Petitioner's Appeal Conflicts with Amendment Fourteen of the United States Constitution and Should be Settled by this Court	13
II. The Decision of the Appellate Court is Erroneous and additionally, the Illinois Supreme Court Rule governing the Filing of Notices of Appeals is Deceptive	14
III. The Question Presented by Petitioner is Important	19
CONCLUSION	22
APPENDIX	23

TABLE OF AUTHORITIES

Cases	Page
Arizona v. Maricopa County Medical Society, 457 U.S. 332, 102 S. Ct. 2466, 73 L.E.2d 48 (1982)	6
Berg v. Allied Security, Inc., 193 Ill. 2d 186, 737 N.E.2d 160, 249 Ill. Dec. 770 (2000)	18
Century Road Builders, Inc. v. City of Palos Heights, 283 Ill. App. 3d 527, 531, 670 N.E.2d 836, 219 Ill. Dec. 158 (1996)	17
Evitts v. Lucey, 469 U.S. 387, 393, 83 L. Ed. 2d 821, 105 S. Ct. 830 (1985)	21
Lee v. Habib, 424 F.2d 891, 137 D.C. 403 (1970)	20, 21
Marsh v. Evangelical Covenant Church of Hinsdale, 138 Ill. 2d 458, 563 N.E.2d 459, 150 Ill. Dec. 572 (1990)	14, 16, 17
Pennsylvania Dental Association, et al v. Medical Service Association of Pennsylvania, 745 F.2d 248 (1984)	10
Smith v. Stoner, 594 F.Supp. 1091 (1984)	20

Statutes and Rules

Amendment XIV, United States Constitution, Section 1	2, 13, 21
28 U.S.C. §1257(a)	2
Illinois S. Ct. Rule 303, Appeals from Final Judgments of the Circuit Court in Civil Cases	3, 13, 14, 16, 19
Illinois S. Ct. Rule 137, Signing of Pleadings, Motions and Other Papers—Sanctions	5, 16

Statutes and Rules	Page
735 ILCS 5/2-1203, Motions after judgment in non-jury cases	4, 12, 15, 18
735 ILCS 5/2-611, Signing of Pleadings, Motions and Other Papers — Sanctions	15
Section 6 of Article VI of the Illinois Constitution of the State of Illinois of 1970	20
Section 12 of Article I of the Illinois Constitution of the State of Illinois of 1970	20

IN THE

Supreme Court Of The United States

OCTOBER TERM, 2000

Marilyn Cole, *Petitioner,*

v.

DOC'S DRUGS, LTD., *Respondent.*

Petition for Writ of Certiorari to the Appellate Court of Illinois, First District

Marilyn Cole respectfully petitions for a writ of certiorari to review the judgment of the Appellate Court of Illinois for the First District in this case.

OPINIONS BELOW

The opinion of the Appellate Court of Illinois (App., *infra,* 1a-4a) is unreported. The opinions of the Circuit Court of Illinois (App., *infra,* 5a-18a) are unreported.

JURISDICTION

On February 2, 2001, the Illinois Appellate Court *sua sponte* dismissed petitioner's appeal for lack of jurisdiction (App., *infra,* 1a-4a). A Petition for Rehearing was filed on February 23, 2001. On March 16, 2001, the Illinois Appellate Court denied the Petition for Rehearing (App., *infra,* 20a). A Petition for Leave to Appeal to the Supreme Court of the State of Illinois was filed on April 20, 2001. On June 6, 2001, the Illinois Supreme Court denied the petition for leave to appeal (App., *infra,* 21a). The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS AND RULES INVOLVED

Amendment XIV, United States Constitution, Section 1, states, in part, as follows:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. §1257(a)

Sec. 1257. State courts; certiorari

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in

question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

ILCS S. Ct. Rule 303, Appeals from Final Judgments of the Circuit Court in Civil Cases states, in part, as follows:

ARTICLE III. CIVIL APPEALS RULES.

PART A. APPEALS FROM THE CIRCUIT COURT

Rule 303. Appeals from Final Judgments of the Circuit Court in Civil Cases

(a) Time; Filing; Transmission of Copy.

(1) Except as provided in paragraph (b) below, the notice of appeal must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment appealed from, or, if a timely post-trial motion directed against the judgment is filed, whether in a jury or a nonjury case, within 30 days after the entry of the order disposing of the last pending post-judgment motion.

(2) When a timely post-judgment motion has been filed by any party, whether in a jury case or a nonjury case, a notice of appeal filed before the entry of the order disposing of the last pending post-judgment motion shall have no effect and shall he withdrawn by the party who filed it, by moving for dismissal pursuant to Rule 309. This is so whether the timely post-judgment motion was filed before or after the date on which the notice of appeal was filed. A new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of the post-judgment motion, as provided in subparagraph (a)(1) of this rule. No request for reconsideration of a ruling on a post-judgment motion will toll the running of the

time within which a notice of appeal must be filed under this rule. A party who filed a premature notice of appeal will not be required to pay a filing fee for a future appeal in the same case if, at the time of filing the future appeal, the party presents the receipt for the fee paid for filing the premature notice of appeal and a copy of the circuit court order dismissing the premature appeal.

Amended effective January 12, 1967; amended effective January 1, 1970; amended October 21, 1969, effective January 1, 1970; amended effective July 1, 1971; amended effective September 1, 1974; amended October 1, 1976, effective November 15, 1976; amended July 30, 1979, effective October 15, 1979; amended August 9, 1983, effective October 1, 1983; amended April 27, 1984, effective July 1, 1984; amended December 17, 1993, effective February 1, 1994.

735 ILCS 5/2-1203, Motions after judgment in non-jury cases

CHAPTER 735. CIVIL PROCEDURE

ACT 5. CODE OF CIVIL PROCEDURE

ARTICLE II. CIVIL PRACTICE

PART 12. POST-TRIAL

Sec. 2-1203. Motions after judgment in non-jury cases. (a) In all cases tried without a jury, any party may, within 30 days after the entry of the judgment or within any further time the court may allow within the 30 days or any extensions thereof, file a motion for a rehearing, or a retrial, or modification of the judgment or to vacate the judgment or for other relief. (b) A motion filed in apt time stays enforcement of the judgment. (Source: P.A. 82-280. §2-1203, eff. July 1, 1982.)

ILCS S. Ct. Rule 137, Signing of Pleadings, Motions and Other Papers—Sanctions states, in part, as follows:

ARTICLE II. RULES ON CIVIL PROCEEDINGS IN THE TRIAL COURT.

PART B. PLEADINGS AND OTHER PAPERS

Rule 137. Signing of Pleadings, Motions and Other Papers—Sanctions

All proceedings under this rule shall be brought within the civil action in which the pleading, motion or other paper referred to has been filed, and no violation or alleged violation of this rule shall give rise to a separate civil suit, but shall be considered a claim within the same civil action.

Adopted June 19, 1989, effective August 1, 1989; amended December 17, 1993, effective February 1, 1994.

STATEMENT OF THE CASE

A. Reasons Why a Lawsuit was Filed Against Respondent and Background Information

This case involves a retaliatory discharge of an experienced retail pharmacist who worked for an independent drug store chain consisting of fourteen drug stores located in northern Illinois in 1992 whereby this independent drug store chain purchased software from a company located in Northbrook, Illinois, Good Value Pharmacies Consulting Services, Inc., whereby this software company was promoting to independent pharmacies throughout the United States a major medical insurance billing program whereby instead of the drug store customers paying the full cash price for prescription drugs and submitting the receipts into their insurance companies themselves, the pharmacy would now call the insurance companies to ask if an assignment of

benefits could be taken whereby now the pharmacy would bill the insurance companies directly and only collect the coinsurance amount from the customer (often twenty percent) once the customer's deductible is met. (Pl.Ex.26) The problem arose due to the fact that the software company was promoting this insurance billing program and petitioner's employer was implementing this insurance billing program without taking into regard what the usual and customary price of the prescription drugs actually was which is the price the insurance companies expect to be billed to them.[1] (Pl.Ex.26; Pl.Ex.2; Pl.Ex.27 & 33)

When petitioner was fired, the prices charged by respondent varied substantially from respondent's usual and customary prices with prices of numerous drugs ranging between 20-60% higher than the usual and customary prices of the drugs and some drugs being priced 2 and ½ times over respondent's usual and customary prices which resulted in significant dollar figures which resulted at times in respondent charging $100.00 per prescription drug over respondent's usual and customary prices. (Pl.Ex.26, pp.15-20) Lists of prescription drugs and prices charged for numerous commonly prescribed drugs using the inflated pricing were presented as trial exhibits which also included the respondent's normal cash prices, amounts reimbursed by managed care plans, and prices charged by other retail pharmacies who were local competition of respondent. (Pl. Ex. 26, 28 & 29) The major medical insurance prices submitted were, for the most part, far higher than respondent's normal cash prices, prices charged by other local retail pharmacies, and amounts paid by respondent's managed care insurance plans that accounted for over fifty percent of respondent's prescription business in the year that petitioner was fired according to both petitioner and respondent.

---

[1] In *Arizona v. Maricopa County Medical Society*, 457 U.S. 332, 102 S. Ct. 2466, 73 L.E.2d 48 (1982), at footnote 7 at 457 U.S. 339, the Supreme Court stated that, "Most health insurance plans are of the fee-for-service type. Under the typical insurance plan, the insurer agrees with the insured to reimburse the insured for "usual, customary, and reasonable' medical charges..."

(Pl.Ex.28 & 29) (Tr. Vol. 4, p.143 & pp.150-151; Tr. Vol. 5, p.142) If an insurance company called and questioned a price being charged on prescription drugs when this billing method was being used, petitioner was instructed to state to the insurance company that she made a mistake when billing the insurance company which is a flagrant lie. (Pl.Ex.26, p.9) When petitioner, the following day, asked another primary owner of the software company why one needs to lie to an insurance company, he replied, "It works." (Pl.Ex.26, p.3) The form sent to the insurance companies, the Major Medical Claim Report, (Pl.Ex.2) stated that the prices were the pharmacies "regular" prices whereas in fact the prices charged were much higher than Doc's Drugs "regular" prices.

Petitioner repeatedly questioned the legality and ethics of increasing the prices of prescription drugs when her employer was instructing her how to implement this program in the particular drug stores she worked in on the first night petitioner became aware of the specifics of this billing method. (Pl.Ex.26, pp.8-10) Petitioner was repeatedly told that there was nothing wrong with this billing method by both corporate officers of her employer and a primary owner of the software company. (Pl.Ex.26, pp.8-10) The next day petitioner called the Illinois Department of Professional Regulation and the Illinois Pharmacists Association and spoke to the head pharmacists of each of these organizations and both men told her that if her employer was doing what she was saying that this is fraud. (Pl.Ex.26, p.10) (Tr. Vol. 4, pp.40-48) Petitioner contacted the primary owner of her employer and told him that she called the two organizations above and what the representatives of these organizations had told her. (Pl.Ex.26, p.10) (Tr. Vol. 4, pp.54-58) Two days later petitioner's employer told her that she must participate in this billing procedure and here she flatly refused to follow her employer's demand. (Pl.Ex.26, p.11) (Tr. Vol. 4, pp.71-72) Petitioner was fired the following day. (Pl.Ex.26, p.11) (Tr. Vol. 4, pp.80-81)

After being fired, petitioner reported this matter to a number of governmental and nongovernmental agencies which included the National Insurance Crime Bureau and to a number of insurance companies. (Pl.Ex. 20, 21, 22, 23, 24, 25, 26; Df.Ex. 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27) Due to her report to the National Insurance Crime Bureau, a federal grand jury investigation of this billing method continued for approximately one year. (Pl.Ex. 32, Df.Ex. 27) During this grand jury investigation, an investigator stated that three insurance companies, namely Sentry Insurance Company, CIGNA Health Insurance Company, and Blue Cross/Blue Shield of Illinois had advised the special agent that the billing procedure of defendant would constitute a fraud against the insurance companies. (Pl.Ex.32) Likewise, the Attorney General's Office of Michigan was contacted and the representative from the Michigan Attorney General's Office stated that there was no doubt in his mind that the hypothetical situation given to him was in fact a fraud and the representative continued that depending upon the particular circumstances, the hypothetical situation could also involve mail fraud and racketeering. (Df.Ex.27, pp.41-42) The hypothetical situation given to this representative was as follows and this may be found on page 41 of Defendant's Exhibit 27:

> The insured has met his deductible and has a policy which has an eighty/ twenty co-payment. The insured receives a prescription from his doctor and goes to the neighborhood pharmacy and presents the prescription for drug x. The pharmacist prepares the prescription and the patient pays the pharmacist a designated amount. The patient then submits the receipt to his insurance carrier and a few weeks later he receives a check representing his portion of the eighty/twenty co-pay.
>
> This scenario is repeated but with the pharmacy soliciting the patient to assign benefits to the pharmacy under the guise

of the patient not having to do the paperwork nor having to lay out the cost of his prescription and thereby have to wait for the eighty percent co-payment from the carrier. The pharmacy contacts the carrier and obtains verbal authorization to submit the assignment of benefits forms.

The pharmacy has in place a software program where once the assignment of benefits form has been submitted, the retail price of the drug is inflated between twenty and forty percent without the knowledge of the patient or the insurance company involved. In this scenario, both the patient and the carrier would be paying more for the same prescription. The software program is allegedly advertised as free money to the pharmacy and the software provider is allegedly collecting a percentage of the new and existing business.

Even with these facts, the U.S. Attorney's office still declined to prosecute petitioner's former employer or the software company (Df.Ex.27, pp.57-58), but referred the matter to the Federal Trade Commission (Df.Ex.27, pp.57, 59-60, 62) who petitioner believes also took no regulatory action against either the respondent or the software company for reasons unknown to petitioner. (Supp. Rec., Vol. 1, p.218) In 1995, petitioner contacted Gloria Urbanski, R.Ph., an Illinois Department of Professional Regulation compliance investigator, about this matter. In 1995, Gloria Urbanski told petitioner that she discussed this matter with Richard Kuhlman, one of her superiors at the Illinois Department of Professional Regulation, and was told by Richard Kuhlman that since the Illinois Department of Professional Regulation was aware that so many other independent pharmacies did this type of inflated billing, the Illinois Department of Professional Regulation could not prosecute the respondent if the Illinois Department of

Professional Regulation would not prosecute the other pharmacies.[2]

B. Brief History of the Case in the Circuit Court

In 1994, nearly two years after petitioner was fired, petitioner hired a very reputable and experienced employment lawyer, Russell M. Kofoed of Fox and Grove, Chartered, to represent her in her retaliatory discharge lawsuit against respondent. (R. C3-9) The case went to trial nearly five years later and was tried as a bench trial before Judge Richard E. Neville. (Tr. Vol. 4&5)

During the course of the litigation before the trial, respondent admitted to firing petitioner for contacting the two agencies she contacted. (R. C188-189) In Respondent's answers to Paragraphs 9 & 10 of Petitioner's Amended Complaint (R. C226) and Respondent's answers to Paragraphs 9 & 10 of Count III of Petitioner's Amended Complaint (R. C278), respondent admitted to increasing the prices over their cash prices when billing the insurance companies directly. During the trial, two of respondent's corporate officers admitted to not following the contracts between the insurance company and the insured customers of respondent's drug stores when billing under major medical insurance company policies with respect to what the policies state concerning the charges the insurance companies will pay under major medical insurance policies. (Tr. Vol. 5, pp.76-77, Tr. Vol. 5, pp.128-133) Certified copies of major medical insurance company policies from the Illinois Department of Insurance (Pl.Ex.27 & Pl.Ex.33) were presented for Judge Richard Neville to examine which he refused to examine and stated, "If this ever is handled in a court other than mine, you can

---

[2] Likewise, in *Pennsylvania Dental Association, et al v. Medical Service Association of Pennsylvania,* 745 F.2d 248 (1984), the United States Court of Appeals for the Third Circuit noted at 745 F.2d 258 that Blue Shield's in-office review experience showed that about one-half of the dentists who agreed to verify their usual charges had charged inflated fees to Blue Shield and that about one-third of the dentists contacted refused to verify their usual charges.

attach all of them for all I care. Let somebody else spend their time reading it." (Tr. Vol. 4, p.215) At pages 124-125 of Vol. 5, John DeMarie, a corporate owner of Doc's Drugs, Ltd., stated, "No." after being asked if the insurance companies were ever notified that Doc's Drugs was going to bill the insurance companies higher prices than the cash prices of Doc's Drugs. At pages 65-67 of Vol. 5, Anthony Sartoris, another corporate owner of Doc's Drugs, Ltd., replied affirmatively when asked if some insurance companies did object to the higher prices charged and testified that only if the insurance companies or the customers would ask, would the insurance companies or the customers be told that the price was higher.

Each of the elements of a retaliatory discharge action was proved. Yet, with all of the above, Judge Richard Neville somehow ruled against petitioner and included in his ruling (App., *infra,*7a) immediately after the trial without reading through the Exhibits presented during the trial, that petitioner should unequivocally pay the legal expenses of the winner stating:

> *But I will say that this is one of those cases where someone someday is going to — and ought to use it as a poster child case for the English rule, which is that the loser ought to pay the expenses of the winner. . .* (Tr.Vol.5, p.184)

Likewise at page 438 of the trial transcript, Judge Neville in his opinion (App., *infra,* 11a) directly after the trial of this action states:

> *... and I think that her conduct was so egregious that coming into court and asking for money from the court system for being terminated is a farce.* (Tr.Vol.5, p.191)

Respondent's lawyer filed a motion for sanctions for attorney fees which was granted but here Judge Neville actually took time to read through the Exhibits that were presented at trial (Tr.Vol.5, p.197) and included in Petitioner's Response to the

Motion of Respondent for Sanctions. (Supp. Rec., pp.15-175) His order (App., *infra,* 16a) now stated that only a sanction *de minimis* of $1,000 would be granted against the petitioner and stated that it is the public policy of this State not to discourage the exposure of wrongdoing. (Supp. Rec., Vol. 1, p.182) Judge Richard Neville retired shortly thereafter. Petitioner filed a motion for reconsideration of the sanctions order (Supp. Rec., pp.187-385) and respondents also filed a motion for reconsideration of the sanctions order. (Supp. Rec., pp.388-434) The two motions for reconsideration were denied by Judge James F. Henry. (App., *infra,* 18a)

C. Brief History of the Case in the Reviewing Courts of the State of Illinois

Petitioner appealed *pro se* and the appeal was fully briefed. When the Illinois Appellate Court considered the appeal, the appellate court did not consider that in this lawsuit the trial court judge decided that sanctions should and would be granted against the petitioner immediately after the trial and that this was part of the judgment pronounced immediately after the trial. No independent determination was needed to be made by the trial court judge in relation to sanctioning the plaintiff and his words authenticate this fact beyond the shadow of a doubt (App., *infra,*11a). Had the appellate court considered these facts, the appellate court, according to state precedent, should have determined that petitioner's notice of appeal was timely filed since the motion for sanctions filed against petitioner was a post-judgment motion as defined by the Illinois Code of Civil Procedure at 735 ILCS 5/2-1203 and the two motions for reconsideration of the sanctions order were requests for reconsideration of a ruling on a post-judgment motion. Petitioner's filing of her notice of appeal followed the dictates of

Illinois Supreme Court Rule 303(a)(2) which states, in part, as follows:

> *No request for reconsideration of a ruling on a post-judgment motion will toll the running of the time within which a notice of appeal must be filed under this rule.*

Without considering these facts, the appellate court, *sua sponte,* found that petitioner's filing of her notice of appeal was untimely and dismissed her appeal due to lack of jurisdiction. Petitioner filed a *pro se* petition for leave to appeal to the Illinois Supreme Court which was denied on June 6, 2001 (App., *infra,* 21a) as was petitioner's *pro se* motion for leave to file a motion for reconsideration of the denial of her petition for leave to appeal. Petitioner is here requesting that the Supreme Court of the United States grant a writ of certiorari to the Illinois Appellate Court so that her appeal can be decided on the merits of the case since the State of Illinois grants the right to an appeal to every citizen of the State.

REASONS FOR GRANTING THE PETITION

I. The Appellate Court's Dismissal of the Petitioner's Appeal Conflicts with Amendment Fourteen of the United States Constitution and Should be Settled by this Court

Amendment Fourteen of the United States Constitution states that no State may deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. This case involves a state court's decision denying fundamental rights of the petitioner to have her appeal decided on the merits when her notice of appeal was technically filed according to state procedural rules. Here the Appellate Court of Illinois *sua sponte* dismissed her appeal. These rights should be protected in this country whenever possible as many years ago this country decided that courts needed to be in place above the trial courts in order for

citizens to have a greater likelihood of receiving justice when legal rights are infringed upon. Granting this petition for a writ of certiorari would set a precedent that a state court cannot deny a citizen's fundamental rights of due process of law and equal protection under the law in relation to the rights of having an appeal be decided on the merits when procedural rules are technically followed.

II. The Decision of the Appellate Court is Erroneous and additionally, the Illinois Supreme Court Rule governing the Filing of Notices of Appeals is Deceptive

When petitioner filed her second Notice of Appeal, *pro se,* petitioner read Illinois Supreme Court Rule 303(a)(2) which includes the following sentence:

> *No request for reconsideration of a ruling on a post-judgment motion will toll the running of the time within which a notice of appeal must be filed under this rule.*

The facts in this case seemed to ideally fit the "plain meaning" of the sentence above in that the Sanctions motion was filed after the trial was over thus being the "post-judgment motion" in the sentence above and Petitioner's attorney had filed a Motion to Reconsider the Sanctions order of $1,000 against her thus being a "request for reconsideration of a ruling on a post-judgment motion" in the sentence above. Petitioner believed that she followed this rule as stated by filing her notice of appeal within thirty days of the Order resulting from the Motion on Sanctions. It is noteworthy that the respondent who was represented by not only a very experienced attorney who had been involved with this case from the beginning of the lawsuit but also by an attorney who had experience in appellate work hired specifically to help the trial lawyer with this appeal, did not move to dismiss this appeal but filed a brief in response to petitioner's appellate brief.

Petitioner, when she filed her notice of appeal, was unaware of the case of *Marsh v. Evangelical Covenant Church of Hinsdale,*

138 Ill. 2d 458, 563 N.E.2d 459, 150 Ill. Dec. 572 (1990). In *Marsh,* the Supreme Court of Illinois stated at 563 N.E.2d 462 as follows:

> Even if we were to construe the defendant's section 2-611 motion for attorney fees as a motion to modify the judgment, it was not a post-trial motion within the meaning of Supreme Court Rule 303 (a), because it was not a post-trial motion "directed against the judgment." (107 Ill.2d R. 303(a).) The defendant here moved for attorney fees under section 2-611 after judgment was entered on the plaintiffs' complaint. Although the motion related to allegations and denials made by the plaintiffs, it did not attack the original judgment entered in the defendant's favor. **The question of whether section 2-611 sanctions were appropriate required an independent determination, entirely distinct from judgment previously entered.** *Withall v. Capitol Federal Savings of America* (1987), 164 Ill.App.3d 851, 115 Ill. Dec. 803, 518 N.E.2d 328. (Emphasis added.)

Section 2-611 of the Code of Civil Procedure (735 ILCS 5/2-611) was repealed and was replaced by Illinois Supreme Court Rule 137 which was adopted on August 1, 1989. (Illinois Supreme Court Rule's 137 Committee Comments, August 1, 1989.) Relevant parts of the Illinois Code of Civil Procedure and the Illinois Supreme Court Rules needed for an understanding of the issues involved are as follows:

A. The Illinois Code of Civil Procedure states at 735 ILCS 5/2-1203(a) as follows:

5/2-1203. Motions after judgment in non-jury cases.

Section 2-1203. Motions after judgment in non-jury cases. (a) In all cases tried without a jury, any party may, within 30 days after the entry of the judgment or within any further time the court may allow within the 30 days or any extensions thereof, file

a motion for a rehearing, or a retrial, or modification of the judgment or to vacate the judgment or for other relief;

B. Supreme Court Rule 303, Appeals from Final Judgments of the Circuit Court in Civil Cases, part (a)(1) states as follows:

Rule 303. Appeal from Final Judgments of the Circuit Court in Civil Cases

(a) Time; Filing; Transmission of Copy.

(1) Except as provided in paragraph (b) below, the notice of appeal must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment, appealed from, or, if a timely post-trial motion directed against the judgment is filed, whether in a jury or a nonjury case, within 30 days after the entry of the order disposing of the last pending post-judgment motion; and

C. Supreme Court Rule 137, Signing of Pleadings, Motions and Other Papers—Sanctions states, in part, as follows:

Rule 137. Signing of Pleadings, Motions and Other Papers—Sanctions

All proceedings under this rule shall be brought within the civil action in which the pleading, motion or other paper referred to has been filed, and no violation or alleged violation of this rule shall give rise to a separate civil suit, but shall be considered a claim within the same civil action.

The Illinois Appellate Court in petitioner's case noted in its opinion (App., *infra,* 2a) the Supreme Court Rule relating to sanctions stated above, but the Illinois Appellate Court failed to note that unlike the *Marsh* case, petitioner's case involved a determination by the judge immediately after the trial that petitioner should and would be sanctioned and this was part of the judgment. Other Illinois courts have held that in certain cases and under certain circumstances, a hearing is not necessary in order

for a trial court to make a determination on sanctions if a determination can be made on the basis of the pleadings or trial evidence as exemplified in the following case:

- *Century Road Builders, Inc. v. City of Palos Heights,* 283 Ill. App. 3d 527, 531, 670 N.E.2d 836, 219 Ill. Dec. 158 (1996), where the Appellate Court of Illinois, First District, stated: "As this court held in *Fried v. Barad,* 187 Ill. App. 3d 1024, 135 Ill. Dec. 450, 543 N.E.2d 1018 (1989), a hearing is necessary in order for a trial court to determine if any untrue statement within a pleading was made without reasonable cause, unless the court's determination of the issue can be made on the basis of the pleadings or trial evidence." Later at 283 Ill. App. 3d, page 531, the court continues:

  > The determination of whether to grant a motion for sanctions is a matter committed to the sound discretion of the trial court (*Yassin,* 133 Ill.2d at 467, 141 Ill. Dec. 791, 551 N.E.2d 1319), as is the assessment of a monetary award once sanctionable pleading has been found. (*Fried,* 187 Ill. App. 3d at 1027, 135 Ill. Dec. 450, 543 N.E.2d 1018). However, the predicate to such deference is that the circuit court must base its determination upon evidence taken at a hearing or matters of record which justify foregoing an evidentiary hearing. *In re Estate of Smith,* 201 Ill. App. 3d at 1009, 147 Ill. Dec. 398, 559 N.E.2d 571.

Thus, petitioner here states that the Appellate Court of Illinois erred because the facts in petitioner's case are different than in the case of *Marsh* in that in petitioner's case no independent determination was needed to be made on the issue of sanctions as the trial court judge in this case determined beyond the shadow of a doubt immediately after the trial that petitioner should and would pay the respondent's legal expenses and this was part of the

judgment. This was mentioned previously in petitioner's Statement of the Case when the trial court judge ruled (App., *infra*, 7a) as follows:

> *But I will say that this is one of those cases where someone someday is going to — and ought to use it as a poster child case for the English rule, which is that the loser ought to pay the expenses of the winner...* (Tr.Vol.5, p.184)

and later when the trial court judge stated (App., *infra*, 11a):

> *...and I think that her conduct was so egregious that coming into court and asking for money from the court system for being terminated is a farce.*(Tr.Vol.5, p.191)

In *Berg v. Allied Security, Inc.*, 193 Ill. 2d 186, 737 N.E.2d 160, 249 Ill. Dec. 770 (2000), an Illinois Supreme Court Case, Chief Justice Harrison, dissenting, states at 737 N.E.2d 168 that section 2-1203, as part of the Code of Civil Procedure, is to be liberally construed.

As no independent determination, entirely distinct from the judgment previously entered was needed, the motion of the defendants after the trial of this action for legal fees in petitioner's case can be defined as a "post-judgment" motion as defined by section 2-1203 of the Illinois Code of Civil Procedure, the motion after the trial resulted in an attempt to modify the judgment and was "directed against the judgment." Indeed, after the judge actually read through the documents pertaining to the motion, many of which were trial exhibits the judge never read prior to making his decision immediately after the trial of this action, the judge now modified his original decision and hit petitioner with only a minimal sanction unlike what his ruling was immediately after the trial. Thus, the Motions for Reconsideration of the Sanctions Order can be classified as requests for reconsideration of a ruling on a post-judgment motion. As petitioner filed her second Notice of Appeal within 30 days of the order for sanctions and since the two motions for reconsideration can be considered

requests for reconsideration of a ruling on a post-judgment motion, petitioner's second Notice of Appeal can be determined to have been timely filed following the guidelines of Illinois Supreme Court Rule 303(a)(2) which states, in part, as follows:

> *No request for reconsideration of a ruling on a post-judgment motion will toll the running of the time within which a notice of appeal must be filed under this rule.*

Rational logic and fundamental justice requires a statement here that this judge had absolutely no basis for sanctioning petitioner for any amount of money; clearly this was a very abusive use of his power. Petitioner's attorney had clearly demonstrated to any reasonable person that she had been fired for reporting this insurance billing scheme to appropriate agencies and for her refusal to participate in it. Petitioner should have succeeded in her retaliatory discharge action and no appeal should ever have been necessary to be filed by petitioner. The fact that no governmental agency ever took any disciplinary action against respondent or the software company is not the fault of the petitioner here. Petitioner did exactly what petitioner should have done when presented with the conditions she was put into. It is truly absurd that the judge decided to make the statements he made after the trial and even more absurd that after he actually read through the material presented to him at trial that he hit the petitioner with any amount of sanctions.

III. The Question Presented by Petitioner is Important

Basic rights have little meaning without access to the judicial system that vindicates them. Petitioner, as every citizen in this country, has the basic right to work for an employer without being instructed on how to commit a type of fraud and without being told that she must participate in the employer's fraudulent practice. Petitioner, as every citizen in this country, has the basic right to address the issues of her termination from employment for being fired for reporting her employers improper practice to

the appropriate agencies and for refusing to participate in the fraudulent scheme in the courts of this country. The circuit court did not rule correctly in this case, the reason for which can only be explained by the judge who for whatever reason saw to rule against a professional who cared more about trying to stop an injustice by reporting a grand health care insurance billing scheme devised by a few unethical pharmacists than she cared about her present and quite possibly her future financial well-being as in this country "whistle-blowers" are not looked kindly on by future potential employers. The Appellate Court of Illinois was devised many years ago with the power to correct errors made in the Circuit Court of this State. Petitioner, like every citizen in this country, should be allowed to address the basic right of being able to work for an employer without being instructed by the employer on how she is to commit fraud and later being told by the employer that she must participate in the employer's fraudulent practice in the Appellate Court of a state which gives citizens the basic right to appeal decisions of a Circuit Court when a trial court judge takes it upon himself to rule in favor of an employer who engages in a fraudulent billing practice. Section 12 of Article I of the Illinois Constitution of the State of Illinois of 1970, states: "Every person shall find a certain remedy in the laws for all injuries and wrongs which he receives to his person, privacy, property or reputation. He shall obtain justice by law, freely, completely, and promptly." Section 6 of Article VI of the Illinois Constitution of the State of Illinois of 1970, states, in part: "Appeals from final judgments of a Circuit Court are a matter of right to the Appellate Court in the Judicial District in which the Circuit Court is located . . ."

If the State imparts a due process right, then it must give that right. *Smith v. Stoner,* 594 F.Supp. 1091 (1984). Concept of equal protection and due process are not mutually exclusive. *Lee v. Habib,* 424 F.2d 891, 137 D.C. 403 (1970).

> The equal protection clause applies to both civil and criminal cases; the Constitution protects life, liberty and property. It is the importance of the right to the individual, not the technical distinction between civil and criminal, which should be of importance to a court in deciding what procedures are constitutionally required in each case. Often a poor litigant will have more at stake in a civil case than in a criminal case. "The struggling employee . . may well find a wage attachment or confiscation of his tools as onerous in securing employment as a criminal conviction. Moreover, the citizen who permanently loses his home, a government job, a required license, or unemployment benefits may . . . receive a more crippling blow that the criminal who serves a jail sentence." *Id.*

Although the Constitution does not afford a defendant the right to appeal a conviction, once provision is made for the right to appeal, such an appeal must comport with the constitutional demands of due process and equal protection of the law. *Evitts v. Lucey,* 469 U.S. 387, 393, 83 L. Ed. 2d 821, 105 S. Ct. 830 (1985).

Denying an appeal on jurisdictional grounds is a very drastic measure that should not be the law in this land when a notice of appeal can be determined to have been timely filed as the Fourteenth Amendment of the Constitution of the United States gives citizens basic rights with respect to the rights of due process and equal protection under the law as shown in the preceding cases. Petitioner has both the state and federal constitutional right to have her appeal be decided on the merits as her appeal was technically under the jurisdiction of the Appellate Court of Illinois. Petitioner is requesting that this Court grant her writ of certiorari and to ultimately set a precedent that no state can deny a citizen's right to have an appeal be decided on the merits of the case when a state gives a citizen the right to appeal and the appeal is technically under the jurisdiction of the state court.

CONCLUSION

The petition for a writ of certiorari should be granted.

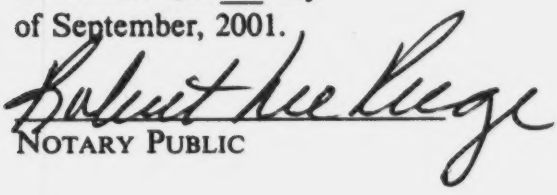
Respectfully submitted,

MARILYN COLE
Petitioner, Pro se

Dated: September 4, 2001

MARILYN COLE, *Petitioner, Pro se*
51 Brookston Drive
Schaumburg, Illinois 60193
(847) 352-0195

SUBSCRIBED AND SWORN to
before me this 4th day
of September, 2001.



NOTARY PUBLIC

APPENDIX

Table of Contents of Appendix

Document	Page
Opinion of the Appellate Court, February 2, 2001	1a
Opinion of the Trial Court, March 4, 1999	5a
Order of Judge Richard Neville after Trial of Case finding for Defendant, March 4, 1999	15a
Order of Judge Richard Neville Imposing Sanctions of $1,000 on Plaintiff, July 28, 1999	16a
Order of Judge James Henry after Hearing on Motions to Reconsider the Imposition of Sanctions, December 10, 1999	18a
Order of Appellate Court denying Petition for Rehearing, March 16, 2001	20a
Order of the Supreme Court of Illinois denying Petition for Leave to Appeal, June 6, 2001	21a

FIFTH DIVISION
February 2, 2001

NOTICE

The text of this order may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

No. 1-99-3048

IN THE

Appellate Court of Illinois
First Judicial District

MARILYN COLE	)	Appeal from
	)	the Circuit Court
Plaintiff-Appellant,	)	of Cook County
	)	
v.	)	No. 94 L 8482
	)	
DOC'S DRUGS, LTD.,	)	Honorable
	)	Richard E. Neville,
Defendant—Appellee.	)	Judge Presiding.

ORDER

Plaintiff Marilyn Cole (Cole) brought an action against her former employer, Doc's Drugs, Ltd. (Doc's Drugs) alleging retaliatory discharge. On March 4, 1999, the court entered a final judgment on the merits in favor of Doc's Drugs. Subsequently, on April 5, 1999, Doc's Drugs filed a motion for sanctions against Cole pursuant to Illinois Supreme Court Rule 137. 155 Ill. 2d R. 137. Also on April 5, 1999, Cole filed a notice of appeal with this court. On May 26, 1999, this court dismissed Cole's notice of appeal as premature. The trial court heard and granted Doc's Drugs' motion for sanctions on July 28, 1999. On

August 24, 1999, Cole filed a motion to reconsider the July 28, 1999 order imposing sanctions against her. Cole then filed her final notice of appeal on August 27, 1999. Also on August 27, 1999, Doc's Drugs filed a motion to reconsider the July 28, 1999 order. On December 10, 1999, the trial court denied both Cole's and Doc's Drugs' motions to reconsider.

Neither party on appeal raises the issue of whether this court has jurisdiction over this case. However, this court has an obligation to consider its jurisdiction and dismiss an appeal if jurisdiction is lacking. *Peabody Coal Co. v. Industrial Commission*, 307 Ill. App. 3d 393, 395, 718 N.E.2d 370, 372 (1999). Further, a challenge to a court's subject matter jurisdiction may be raised at any time. *Geise v. Phoenix Co. of Chicago, Inc.*, 159 Ill. 2d 507, 515, 639 N.E.2d 1273, 1276 (1994). In so doing, we find that we have no jurisdiction over this appeal, and therefore, it is dismissed.

Supreme Court Rule 137 provides that

> "All proceedings under this rule shall be brought within the civil action in which the pleading, motion or other paper referred to has been filed, and no violation or alleged violation of this rule shall give rise to a separate civil suit, but shall be considered a claim within the same civil action." 155 Ill. 2d R. 137.

Therefore, a motion for sanctions brought under this rule is considered part of the underlying civil action. *Cashmore v. Builders Square, Inc.*, 207 Ill. App. 3d 267, 272, 565 N.E.2d 703, 706 (1990). Absent a finding pursuant to Supreme Court Rule 304(a), no appeal may be taken from the underlying civil action until a timely filed Rule 137 petition has been resolved. *Peabody Coal Co.*, 307 Ill. App. 3d at 395-96, 718 N.E.2d at 372. When a Rule 137 claim is brought after the disposition of the

main claim, the judgment entered on the main claim, even though otherwise a final judgment, is not appealable. *Cashmore*, 207 Ill. App. 2d at 273, 565 N.E.2d at 707.

In this case, once the motion for sanctions pursuant to Rule 137 was filed, the underlying civil action remained pending and was not final and appealable. It was for this reason that this court properly dismissed Cole's first notice of appeal on May 26, 1999 as premature. The Rule 137 motion for sanctions was granted on July 28, 1999. That ruling resolved the issue of sanctions and the underlying civil action, making it final and appealable to this court. However, Cole and Doc's Drugs then both filed motions to reconsider the order granting sanctions.

Under Supreme Court Rule 303(a)(2),

> "[w]hen a timely filed post-trial motion has been filed by either party, *** a notice of appeal filed before the entry of the order disposing of the last pending post-judgment motion shall have no effect and shall be withdrawn by the party who filed it ***. A new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of the post-judgment motion, as provided in subparagraph (a)(1) of this rule." 155 Ill. 2d R. 303(a)(2).

Therefore, when the motions to reconsider, which were timely filed post-trial motions, were filed, the July 28, 1999 order was no longer final and appealable. Once again, the underlying civil action, and the sanctions motion, remained pending in the trial court and were therefore not final and appealable. Cole's notice of appeal filed on August 27, 1999 had no effect as it was filed before the entry of the order disposing of the motions to reconsider.

The sanctions issue was not fully resolved by the trial court until December 10, 1999 when the court denied both motions to reconsider. It was only then, on December 10, 1999, that the Rule 137 sanctions issue and the underlying civil suit were fully resolved. At that point, the trial court's order on the merits and sanctions became final and appealable. Cole then had 30 days after the December 10, 1999 order in which to file her timely notice of appeal, pursuant to Rule 303(a)(1). That rule provides that the notice of appeal must be filed "within 30 days after the entry of the order disposing of the last pending post-judgment motion." 155 Ill. 2d R. 303(a)(1); *see e.g., In re Application of Lake County Collector*, 279 Ill. App. 3d 133, 137, 664 N.E.2d 1049, 1052 (1996). Cole failed to file another notice of appeal with this court after that date, and therefore, we lack jurisdiction over the case.

For the reasons stated above, this appeal is dismissed for lack of jurisdiction.

Appeal dismissed.

THIES, J., with QUINN, P.J., and REID, J., concurring.

STATE OF ILLINOIS)
) ss:
COUNTY OF COOK)

IN THE
Circuit Court of Cook County
County Department—Law Division

MARILYN COLE	)	
Plaintiff,	)	
	)	
v.	)	No. 94 L 08482
	)	
DOC'S DRUG, LTD.,	)	
Defendant.	)	

Partial record of proceedings before the Honorable RICHARD E. NEVILLE, Judge of the Circuit Court of Cook County, Illinois, commencing at 1:45 o'clock p.m. on the 4th day of March, A.D. 1999, upon the trial of the above entitled case.

PRESENT:

FOX AND GROVE, CHTD.,
By MR. RUSSELL M. KOFOED,
311 South Wacker Drive
Suite 6200
Chicago, Illinois 60606
(312) 876-0500

appeared on behalf of the Plaintiff,

SPATUZZA & SPATUZZA
By MR. JOHN G. SPATUZZA,
221 North LaSalle Street
Suite 2000
Chicago, Illinois 60601
(312) 782-8030

appeared on behalf of the Defendant,

STERN & DEVITT, LTD.,
By MR. STEVEN E. STERN,
221 North LaSalle Street
Suite 2000
Chicago, Illinois 60601
(312) 726-4400

appeared on behalf of the Defendant.

* * * * *

THE COURT: You guys sit down. First of all, I want to say that I think it's a very significant issue for we judges who have to hear these cases that we take seriously the motions for summary judgment.

This case makes me and will make me more aware of the issue of what is a clearly mandated public policy because I'm a little disenchanted with what I believe now that I've heard this on trial, was originally presented to me by the plaintiff, and the way I took the arguments, and that's not a criticism of Mr. Kofoed. His job is to be an advocate and represent his client, and he did, and I didn't grant the motion for summary judgment because I thought his arguments were sufficient to overcome the objections of Doc's Drugs.

But I will say that this is one of those cases where someone someday is going to — and ought to use it as a poster child case for the English rule, which is that the loser ought to pay the expenses of the winner because this is truly a case of an obsession by the plaintiff which is for her private issues and her private war and using what is a very sacred obligation under our law that even though we are an at-will State, that people be not punished for what is good conduct on their part or what they perceive to be good conduct.

One of the interesting issues that I asked the lawyers to address, and I'm not sure either one of them really did, was a question of how do we determine whether an employee had a reasonable belief.

It cannot be what Mr. Kofoed argues, which is if the plaintiff subjectively in her own mind believed that she was doing the right thing, therefore, she is automatically protected. That cannot be the law.

Obviously, the law can't be if the employer just is upset with the employee, to fire the employee. That's not the law either.

But I think it is appropriate, and I do believe based on the testimony that I have heard in this court, both from Ms. Cole herself and from witnesses which have been produced for trial, that it was irrelevant and totally immaterial to Marilyn Cole what anybody said to her, whether it was somebody from the company which was installing this software program, whether it was her superiors at Doc Drugs or contemporaneously employed pharmacy mates at Doc's Drugs, whether it was Mr. Duffy or Mr. Coleman, whether it was someone from the State's Attorney's Office or the Attorney General's Office or the Federal Trade Commission.

It mattered not to Ms. Cole one wit what anyone else in the whole world said because she believes that she is correct, and facts, no matter what they are, will not interfere with that belief on her part.

I think this case has turned out to be a tragedy for all the parties involved. It's been a very expensive litigation. If Ms. Cole's testimony is correct, she spent $20,000 of her own money to date in pursuing this, and Doc's Drugs, I'm sure, has spent an equal or greater amount in contesting what occurred here.

And the issue ought not to be whether or not she was discharged because she went and made this complaint, and I'm required to take all the testimony in totality to decide what occurred, who is reasonable, who is believable on what really happened.

So to that effect, I state as follows: I believe Mr. Duffy and Mr. Coleman, who came in and testified from the Department of Professional Regulations. They both denied that they ever told Ms. Cole that a fraud had been committed, and they both denied that they ever told her that she would lose her license.

That is a figment of her imagination at best or at worst it's a lie. I don't know which it is. I don't really care. Mr. Duffy and Mr. Coleman were credible witnesses. I believe their testimony.

Not only do I believe their testimony, but it's corroborated by all the actions that everyone took. It's corroborated by all the other things that occurred.

It did not, however, make any difference to Ms. Cole because either she refused to hear it, as she did with Mr. DeMarie when she said she had blocked out what he had to say to her. She might have blocked out what Mr. Duffy had to say and Mr. Coleman and made it up on her own.

If that's the case, she ought to be sanctioned for what's occurred in this courtroom because it is a travesty of what we're supposed to be doing here in this court.

I know Mr. Kofoed to be a fine lawyer and a strong advocate for employees' rights, but I wonder what ought to be the role of attorneys who represent people who make allegations that are not corroborated, which are clearly and truly inappropriate and to continue to litigate these cases for reasons — I'm not sure for what reason. Everyone is entitled to an attorney, but everyone ought to be entitled to some advice that their case may not be what they think it is.

Now, Ms. Cole clearly stated in her own testimony to me on direct examination, not on cross-examination, that she knew she had to be fired.

She said she made it clear that she was never going to comply with the new program of pricing. She said on her direct examination in questioning by her own lawyer that she was not going to quit, and she made it clear to them, and she knew they either had to fire her or discontinue the program, and that was her mission.

Well, it's hard for me to believe that with that testimony I'm supposed to be here deciding whether Doc's Drugs inappropriately acted when she herself indicates that's the position she wanted to put them in, and she did put them in.

Somehow Ms. Cole does not have a clear vision about what her position is in life as an employee. Obviously she has never been an employer or she would have some ideas about the expense and the way things are charged.

It's interesting to me that after talking to the Department of Professional Regulation, parties who represent professional associations, and I think that guy's name was Pilkington who came in here and testified, and by the way, Mr. Pilkington also did not indicate that he ever told her or anyone else there was a violation of any kind of ethical issue to what Doc's Drugs was doing.

And it's interesting to me that Mr. Kofoed is in here arguing that it is a violation and has attempted to prove without bringing in one single witness from the industry to verify that position, continued to argue that it is obviously some type of immoral, illegal, unethical, unconscionable or wrong conduct.

I can't figure out what it's supposed to be because no one has come in here to explain it to me other than Marilyn Cole, who has never explained it to me either.

She has some belief that she knows better than everybody else what ought to be the pricing policies. It's based on her own internal and personal moral code, which she's entitled to have, but it doesn't entitle her to lay it on everybody in the State of Illinois and make it a public policy.

I am mystified as to what the public policy ought to be that the plaintiffs have claimed they are implementing since there is no statute and not even one witness from the insurance business who came in to complain about this and say they didn't like it.

This is strictly a figment of the plaintiff's imagination, and it is not appropriate for all the time and effort and work that has been put into this case by the attorneys, the litigants and by the court system.

Now that I've made the credibility findings as to who I believe, Pilkington I believe as well, it seems to me that then the issue becomes was Ms. Cole fired because of insubordination, as one of the witnesses indicated, or failure to follow instructions, as someone else did, and whether I'm required to separate out those issues from the issue of whether or not she was also fired in addition for making a report to a public agency.

I don't believe they can be separated out. As Ms. Cole testified, her mission was to make sure that this program was never implemented by Doc Drugs; that her position was that she was to be the keeper of the code of conduct for the employer, and it didn't matter what anyone said to her. The guy who was implementing the program, whose name I can't remember, maybe someone can help me out.

MR. STERN: James Gollin.

THE COURT: Mr. Gollin, thank you, who was implementing the program for Doc's or Mr. DeMarie or Mr. Sartoris or anyone else.

I believe the employer did the appropriate thing. They attempted to have her again talk to Mr. Gollin. They had her talk to coemployees who indicated that they were going to go along with the program because they believed it was appropriate.

She refused to accept that, and I think that her conduct was so egregious that coming into court and asking for money from the court system for being terminated is a farce.

She said that Mr. Sartoris belonged in jail for five years. That's pretty serious business, being in jail for five years, and on the stand merely ticked it off as something she said because she

knows better what the system ought to be, better than everybody in the whole world what the pricing system ought to be.

Then she threatened a coemployee and said that if he does that, she's going to take it upon herself to call and complain to every insurance company that Doc's Drugs did business with and make this complaint, and she followed through with it, by the way.

She followed through by complaining to other public agencies, Federal Trade Commission, the FBI, State's Attorney's Office, the Attorney General, Department of Public Regulations.

Ms. Cole is a dangerous woman who doesn't understand herself what she's doing. I don't ascribe necessarily a bad purpose to her. It's very possible she believes she's a good person doing good, but she's unable to process information and to make reasonable and rational judgments based on the information in front of her, which is obvious to me. Otherwise she wouldn't have spent all of this money on her own chasing this false balloon.

I believe that the employees of Doc's Drugs comported themselves properly; that they were entitled to discharge Ms. Cole for her conduct for threatening other employees, for threatening the employer, for acting out in front of—whether customers were present or not is not really clearly established in the record. No customer came in to say that they were there, so I'm not going to consider that as one of the appropriate reasons for firing her. Her other conduct made it clear that she could be discharged.

I believe, as I said before, that there ought to be some check on people at some point in their use of the system, and I believe that if there's another case pending somewhere in the system, that my comments in this case ought to be taken to that judge, and I'd be happy to repeat them.

Even though I know nothing about that case, it's been represented to me there's another retaliatory discharge case, and it makes me wonder what really is the mission that Ms. Cole has. Is it for money or is it for a higher purpose?

This case is discharged. The finding is for the defense on all issues on each count. All the credibility issues go with the defense, and that's the end of this matter.

* * * * * * * * *

STATE OF ILLINOIS)
) ss:
COUNTY OF COOK)

NANCY EATINGER, being first duly sworn, deposes and says that she is a Certified Shorthand Reporter in Cook County, Illinois, and reporting proceedings in the Courts in said County;

That she reported in shorthand and thereafter transcribed the foregoing proceedings;

That the within and foregoing transcript is true, accurate and complete and contains all the evidence which was received and the proceedings had upon the within cause before the Honorable RICHARD E. NEVILLE, Judge of the Circuit Court of Cook County, Illinois.

/s/ NANCY EATINGER
NANCY EATINGER, C.S.R.,
License No. 084-003451
230 West Monroe Street
Suite 1500
Chicago, Illinois, 60602
Phone: (312) 263-3524

SUBSCRIBED AND SWORN to
before me this 11th day
of March, A.D. 1999.

/s/ CASSANDRA A. LUKES
NOTARY PUBLIC

OFFICIAL SEAL
CASSANDRA A. LUKES
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES: 04/22/00

Order CCG-N002

IN THE

Circuit Court of Cook County, Illinois

MARILYN COLE	)	
Plaintiff,	)	
v.	)	No. 94 L 8482
DOC'S DRUGS, LTD.	)	

ORDER

This matter coming upon the court's calendar for trial, the court having heard the testimony and arguments of counsel, it is hereby ordered: that judgment is entered for defendant Doc's Drugs, Ltd. on all issues.

JUDGE RICHARD E. NEVILLE
MAR 04 1999
Circuit Court-237

Atty No. 05914

Name JOHN G. SPATUZZA

Attorney for

Address 221 N. LaSalle

City/Zip Chicago, IL 60601

Telephone 312-782-8030

_____, 19___

Enter

/s/ RICHARD E. NEVILLE

Judge Judge's No.

Aurelia Pucinski, Clerk of the Circuit Court of Cook County, Illinois

CCG-N002-7/1/97-150M(83420763)

ORIGINAL-COURT FILE

IN THE

Circuit Court of Cook County, Illinois
County Department, Law Division

MARILYN COLE	)	
	)	
Plaintiff,	)	
	)	No. 94 L 8482
vs.	)	HON. RICHARD E. NEVILLE
	)	
DOC'S DRUGS LTD.,	)	
	)	
Defendant.	)	

ORDER

Before this court is Defendant Doc's Drugs, Ltd.'s Rule 137 Motion to Impose Sanctions Upon the Plaintiff, Marilyn Cole. Upon consideration of briefs submitted and argument heard in association with the Defendant's Motion for Sanctions, this Court hereby orders:

This Court finds that Illinois Supreme Court Rule 137 applies in this case, and that the Plaintiff should be subject to sanctions for pursuing this claim against the Defendant after the close of discovery, including, the taking of depositions. Thus, this sanction only applies to the Plaintiff after January 1999. However, this Court also finds that it is the public policy of this State not to discourage the exposure of wrongdoing. Therefore, this Court finds that the award of sanctions in this case is de minimis, and shall be set in the amount of $1,000.00.

THEREFORE, IT IS HEREBY ORDERED THAT: The Plaintiff, Marilyn Cole, shall pay the Defendant, Doc's Drugs, the amount of $1,000.00 as Rule 137 sanctions.

JUDGE RICHARD E. NEVILLE
JUL 28 1999
Circuit Court-237

Entered:
/s/ RICHARD E. NEVILLE

HONORABLE RICHARD E. NEVILLE
Circuit Court of Cook County, Illinois
County Department, Law Division
Commercial Calendar "N"

ORDER CCG-N002

IN THE

Circuit Court of Cook County, Illinois
County Department, Law Division

MARILYN COLE	)	
Plaintiff,	)	
	)	No. 94 L 8482
v.	)	
	)	
DOC'S DRUGS, LTD.,	)	
Defendant.	)	

ORDER

This cause coming to be heard on plaintiff's motion to reconsider the order entered by this Court on July 28, 1999, to vacate said order, and to enter an order denying the motion of defendant Doc's Drugs, Ltd., pursuant to Supreme Court Rule 137, to impose upon the plaintiff as a sanction, an order requiring the plaintiff to reimburse the defendant for certain expenses and on defendant's motion to reconsider the order entered by this Court on July 28, 1999, to vacate said order, and to enter in its place instead, an order granting defendant's pending motion, pursuant to Supreme Court Rule 137, that the plaintiff, as a sanction, be required to reimburse the defendant for all legal expenses, paid or incurred by the defendant, in this proceeding, subsequent to August 29, 1996, and this Court being advised in the premises.

IT IS ORDERED that both plaintiff's motion to reconsider and defendant's motion to reconsider are denied except that the order

entered by this Court on July 28, 1999 which states that "Thus, this sanction only applies to the Plaintiff after January, 1999" is amended to read that, "Thus, this sanction only applies to the Plaintiff after February 24, 1999."

Atty No. 24710
Name FOX AND GROVE, CHARTERED
Attorney for Marilyn Cole
Address 311 South Wacker Drive
Suite 6200
City/Zip Chicago, Illinois 60606-6622
Telephone 312-876-0500

_____, 19___

Enter

/s/ JAMES F. HENRY

Judge Judge's No.
JAMES F. HENRY
DEC. 10, 1999
Circuit Court-1536

Aurelia Pucinski, Clerk of the Circuit Court of Cook County, Illinois

CCG-N002-15DM-06/17/99(93420227)

IN THE

Appellate Court of Illinois
First Judicial District

MARILYN COLE,	)	
	)	
Plaintiff-Appellant,	)	
v.	)	No. 1-99-3048
	)	
DOC'S DRUGS, LTD.,	)	
	)	
Defendant-Appellee.	)	

ORDER

This cause coming to be heard on the Petition for Rehearing of the Plaintiff-Appellant, MARILYN COLE, and the Court being fully advised in the premises:

IT IS HEREBY ORDERED that the Petition for Rehearing be denied.

DATED:

ORDER ENTERED
MAR 16 2001
APPELLATE COURT,
FIRST DISTRICT

/s/ PATRICK J. QUINN
Justice

/s/ MARY JANE THIES
Justice

/s/ ELLIS E. REID
Justice

SUPREME COURT OF ILLINOIS
CLERK OF THE COURT
SUPREME COURT BUILDING
SPRINGFIELD, ILLINOIS 62701
(217) 782-2035

June 6, 2001

Ms. Marilyn Cole
51 Brookston Drive
Schaumburg, IL 60193

No. 91367—Marilyn Cole, petitioner, v. Doc's Drugs, Ltd., respondent. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on June 28, 2001.